JD(SF)-36-11
Sandy, Utah

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

SOUTHWEST REGIONAL COUNCIL OF CARPENTERS,
CARPENTERS LOCAL #1507 (PERRY OLSEN DRYWALL, INC.)

and Case 27–CB–5723

GERALD CORNELL, an Individual

Kristyn A. Myers and Karla E. Sanchez, Esqs., of Denver, Colorado,
for the General Counsel.
Daniel M. Shanley, Esq., DeCarlo, Connor & Shanley, of
Los Angeles, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

Lana H. Parke, Administrative Law Judge. This case was tried in Salt Lake City, Utah, on June 21 and 22, 2011.[1] The charge was filed on December 20 by Gerald Cornell (Cornell), an individual. The amended complaint, issued May 25, 2011, alleged that Southwest Regional Council of Carpenters, Carpenters Local #1507 (Respondent or the Union) violated Section 8(b)(1)(A) and (2) of the Act.[2]

I. ISSUES

(A) Did Respondent violate Section 8(b)(1)(A) of the Act by refusing to register Cornell for referral to work.
(B) Did Respondent violate Section 8(b)(2) and 8(b)(1)(A) of the Act by attempting to cause and causing Perry Olsen Drywall, Inc. to discharge Cornell and by refusing to refer Cornell for employment by Perry Olsen Drywall, Inc. at its Huntsman project.

[1] All dates are in 2010, unless otherwise indicated.

[2] At the hearing the General Counsel amended the amended complaint as follows: (1) Appended subpar. (c) to par. 4, adding the name of Jim Sala with the designation of senior representative; (2) added par. 9, "By engaging in the conduct described above in paragraph 6 in connection with its representative status as described above in paragraph 5, Respondent has failed to represent Gerald Cornell for reasons that are unfair, arbitrary, invidious, and has breached the fiduciary duty it owes to said employee and the Unit"; and (3) appropriately renumbered complaint paragraphs.

II. JURISDICTION

Perry Olsen Drywall (the Employer or Perry Olsen), a Utah corporation, with an office and place of business located in Sandy, Utah, has been engaged as a stud and drywall commercial contractor in various states, including the State of Utah. During the 2010 calendar year ending December 31, the Employer, in the course of its business operations, performed services valued in excess of $50,000 in states other than the State of Utah. At all material time, the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and Respondent is a labor organization within the meaning of Section 2(5) of the Act.

FINDINGS OF FACT

Unless otherwise explained, findings of fact herein are based on party admissions, stipulations, and uncontroverted testimony regarding events occurring during the period of time relevant to these proceedings. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I find the following events occurred in the circumstances described below during the period relevant to these proceedings.

A. Respondent's Hiring Hall

The Employer was owned and operated by Perry Brian Olsen (Olsen), as sole owner, for 2 years.[3] The Employer performed work on construction sites in the Rocky Mountain region, mainly in Utah, employing, among other classifications, carpenters and finishers. In 2010, the Employer performed work at the Portneuf Hospital in Pocatello, Idaho (the Portneuf project), employing carpenters represented by the Northwest Carpenters Union Local 635 (Local 635) located in Boise, Idaho, with which the Employer had a project-specific labor contract. In the summer of 2010, the Employer also commenced carpentry work on a project in Salt Lake City, Utah: the Huntsman Cancer Institute (the Huntsman project).

Respondent maintained an office and hiring hall in West Jordan, Utah, in the Salt Lake Valley (the hiring hall). The following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Jim Sala (Sala)[4]	Senior Representative
Bruce Bachman (Bachman)[5]	Union Special Agent
Keith Brown (Brown)	Union Special Agent

[3] Prior to that, the Employer was co-owned by Olsen, his siblings, and his father. In February 2011, the Employer declared bankruptcy.

[4] Sala supervised and managed Respondent's employees, exercised authority in enforcing hiring hall rules, negotiated collective-bargaining agreements, and processed grievances. Sala was an agent of Respondent, as contemplated in Sec. 2(13) of the Act.

[5] The parties stipulated that the name of the individual referred to in the complaint and in much of the transcript as "Buchanan" was in fact "Bachman." Herein, I refer to that individual as Bachman.

For about the last 7 years, the Union and Perry Olsen were parties to the Southern California Drywall/Lathing Master Agreement (the agreement), which covered all Perry Olsen's employees employed to perform work covered thereunder (the unit or carpenters). By the terms of the agreement, Respondent was the exclusive collective-bargaining representative of the unit, and Respondent and Perry Olsen have maintained and enforced the terms of the agreement covering conditions of employment of the unit.

Provisions of the agreement, of which Olsen was fully aware,[6] required the Union to be the exclusive source of referrals of unit employees for employment with Perry Olsen, as follows:

> Contractors shall first call upon [Respondent] for such workers as they may from time to time need and [Respondent] shall furnish to the Contractors the required number of competent persons of the classifications needed by the Contractors.

Operation of the hiring hall was governed by the following established referral work rules for Utah (referral rules), as set forth in pertinent part, a copy of which has been posted at the hiring hall since the fall of 2008[7]:

1.) The Southwest Regional Council will make available a non-exclusive and non-discriminatory referral list for those individuals seeking work in the Construction Industry.
2.) Applicants are allowed to solicit jobs from employers provided the employer is signatory and bound to a collective-bargaining agreement with the Regional Council, in Utah.
3.) Eligibility for referral starts with applicants' personal request for their name to be placed numerically on the out-of-work list. (First come, first served.)
4.) To be eligible for referral, applicants must:
    A. Meet the minimum training and experience qualifications necessary to perform any specific work assignments required by that specific out-of-work list.
    B. Be unemployed and available for work at all times.
        - Anyone working as a carpenter for any employer in state, or out, is subject to immediate removal from the list.
    C. Be currently registered on the out-of-work list.
    D. Pay their current dues or quarterly service fees.[8]
        - Members must be in good standing to be eligible for and/or to remain on the referral list.

[6] By letter dated January 22, 2009, the Union, upon learning the Employer was employing carpenters who had not been dispatched from the hiring hall, informed the company that the employees needed either to become members in good standing or pay the necessary fees to register on the referral list as nonmembers.

[7] The rules were posted in the foyer of the hiring hall and at the out-of-work sign-in counter.

[8] The quarterly service fee was the amount of money charged to persons who were not union members, the payment of which enabled them to sign the out-of-work list if otherwise qualified.

- Non-members must timely pay their quarterly service fee to be eligible for and/or to remain on the referral list.

B. Alleged Violations of Section 8(b)(2) and 8(b)(1)(A)

By the summer of 2010, the Union was no longer accepting new members.[9] At all relevant times, applicants for registration on the hiring hall out-of-work list who were not already members of the Union or another carpenter local could only register on the list as nonmembers after paying the quarterly service fee of $135.[10] Once registered on the out-of-work list, individuals might solicit work directly from contractors signatory to the agreement. Employers were permitted to request by name workers who were registered on the out-of-work list, regardless of their positions on the list. In all situations, whether seeking employees by name or by open request, signatory employers wanting to employ carpenters first had to contact the hiring hall to request their dispatch before they could be hired.[11] Requested employees would be dispatched only if they were registered on the list; requests for workers not registered on the list were not honored. As for unit employees working for a signatory contractor who had not complied with the hiring hall rules, Respondent asked for their removal.

In November, on the dates noted below, the Employer transferred journeyman carpenters from the Portneuf project in Pocatello to the Huntsman project in Salt Lake City. Among those transferred were the following individuals (collectively the Idaho workers):

November 2—Ryan Thompson (Thompson), David Lirgg (Lirgg), and Chris Barton (Barton).
November 15—Jeff Behnke (Behnke).
November 30—Mike Monk (Monk) and Mike Prince (Prince).

Before the Idaho workers began work at the Huntsman project, Olsen told them they needed to go to the hiring hall and sign up. None did so.

On November 2 upon Barton's recommendation, Perry Olsen, also hired Cornell who had not previously worked for the Employer. Cornell was not at that time a member of any union and had never been a member of Respondent.[12] Olsen told Barton to have Cornell go the hiring

[9] The General Counsel argues Respondent's admissions refute testimony that the Union was not accepting new members. Respondent's March 2011 statement of position discloses that Ryan Thompson was permitted to transfer his membership from Local 635 to the Union in February 2011 and also states, "While Local 1507 does have a policy that permits applicants to either become a member or pay a referral fee, applicants have opted to join the union rather than pay a referral fee." Neither the membership transfer nor recitation of the general policy rebuts otherwise unrefuted evidence that during the relevant period, the Union was no longer accepting new members.

[10] Membership in Respondent, when available, required payment of $48 (3 months of dues) plus a $300 initiation fee, for a total of $348.

[11] See art. 4, sec. 2(c) of the agreement.

[12] Cornell's last union membership was in Local 635 out of Boise, Idaho, from about 2002 to 2009. He dropped that membership when he moved to Utah.

hall, pay his fee, and take a drug test before being hired. Cornell began working at the Huntsman project on November 2 without having gone to the hiring hall.

Later in November, it was reported to the Union that some carpenters on Perry Olsen projects in the Salt Lake City area had not been dispatched through the hiring hall. On November 18, during an email exchange between Sala and Olsen, Sala requested a list of Perry Olsen's employees. In a responsive email, Olsen provided the list and told Sala he wanted to keep five of the Idaho workers because he knew how they worked. Although the email did not name the five employees, Olsen testified they were Thompson, Lirgg, Barton, Behnke, and Joshua Smith. Sala replied:

> First, employees who are working for you outside of our bargaining area (Idaho) are not eligible for transfer to jobs in our jurisdiction . . . Second, they are not allowed to begin work until they are dispatched. Third, if they are not on my Out Of Work list and "eligible" for dispatch, they cannot be requested by name.
>
> [I]f there are employees working without a dispatch, they are in violation of the contract and the hiring hall procedures. If I get complaints from any member on the list currently this could cause both of us a problem which we do not want.

Later on November 18, Olsen emailed the Union a work order and requested forms for the dispatch of seven employees. In response, Sala informed Olsen that only three of the names he submitted for dispatch were even eligible to sign the out-of-work list but those three could not be dispatched as they had not signed the out-of-work list. Sala listed the names of seven of Perry Olsen's current employees who had not been dispatched from the hiring hall and were ineligible to sign the out-of-work list or to be dispatched:[13]

Dave Powers	Charlie James
Chris Mousley	Nicholas Huston
Brian Knudsen	Gerald Cornell[14]
Samuel Rios	

Sala said that all seven needed to be removed from employment immediately.

Olsen did not terminate any of the seven-named employees at that time and did not notify the Union that it had failed to do so. Except for Cornell, Olsen did not thereafter discuss the seven-named employees with any union representative.[15]

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[13] Although Sala did not specifically state why the seven were ineligible, the fact that they were then employed by Perry Olsen rendered them ineligible under the hiring hall rules.

[14] There is no evidence as to what information the Union made about the other six individuals, but the Union had ascertained that Cornell was not a member of any carpenter's union, in good standing or otherwise, that he had not paid the quarterly registration and dispatch fee as a nonmember, that he had not signed the out-of-work list, and that he could not sign it because he was working.

[15] The General Counsel asserts that Respondent never (meaning, presumably, after November 18) required Perry Olsen to discharge the six employees aside from Cornell. There is no

Olsen directed his foreman to have Thompson, Lirgg, Barton, Behnke, Monk, and Prince leave the Huntsman job and go to the hiring hall to get things worked out with the Union before they returned to work. On November 19, Cornell went to the hiring hall with Joshua Smith (Smith), Arlin Francin (Francin),[16] Barton, Lirgg, and Behnke.[17]

When the Perry Olsen employees arrived at the hiring hall on November 19, Brown and Bachman were there.[18] Cornell said the group was there "to do what we need to join the Union." Lirgg said the group wanted to put their names on the out-of-work list.

Bachman took Barton, Cornell, and Smith into a back area while Behnke, Francin, and Lirgg stayed with Brown. Bachman told the workers they had gone about it the wrong way. He said they should have gone to the hiring hall first [before working for Perry Olsen], put their names on the out-of-work list, and waited for the Union to call them. Cornell told Bachman he wanted to do whatever was necessary to join the Union, saying he had the necessary funds. Bachman told the Perry Olsen employees they had to take care of membership with their home locals because the Union was not taking any new members. Bachman told the group that workers seeking work had to first sign the out-of-work list at the bottom and that jobs were dispatched on a first-come-first-serve basis. Without specifying how, Bachman told Cornell he might be able to help him a week or so later.[19] Cornell told Bachman that he needed to get in the Union and would like to know what he needed to do to accomplish that.[20] Bachman said there was nothing he could do for him at that time.

Barton, Cornell, and Smith rejoined the others at the hiring hall counter where Brown looked up the status of each on the computer. After checking status, Brown informed the workers as follows:

Lirgg—Brown said Lirgg was current in his dues and dispatched him to Perry Olsen.[21]

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evidence, however, that Respondent knew the six continued to be employed, and on December 1, as described later, Sala told Olsen that all undispatched workers had to be removed.

[16] Smith and Francin worked for Perry Olsen for short periods in November and do not figure significantly in this matter.

[17] Thompson arrived at the hiring hall as the group was leaving.

[18] Both Cornell and Barton testified regarding the November 19 meeting at the hiring hall. In this, as in later interchanges, I found Barton's recall to be clearer and more inherently congruous than Cornell's; Barton's accounts are generally credited.

[19] Cornell testified that at some point, Bachman said he did not think it was right to dispatch the workers, and as far as he was concerned, they could all go home and have a nice weekend. Barton did not corroborate this testimony; as the testimony is incongruent with Bachman's other credited statements, I do not accept it.

[20] I cannot infer from Barton's testimony that Cornell asked to sign the out-of-work list as a nonmember. Counsel for the General Counsel questioned Barton as follows:

Q: . . . did Cornell ask to get on the out of work list?

A: He asked to join and get on—or what he had to do to work.

The most reasonable inference is that Cornell asked to join the Union, linking his request with his immediate desire for work.

[21] It is unexplained why Lirgg's dispatch slip to Perry Olsen was dated November 30.

Barton—Brown said Barton was delinquent in his dues. Barton offered to pay the dues immediately. Brown told Barton to pay in Idaho.
Cornell—Brown said Cornell had been dropped from membership in Local 635 in Boise, Idaho.[22]

After the workers left the hiring hall, Barton telephoned Olsen and told him the Union would not dispatch anyone but Lirgg and would not permit Cornell to join the Union.[23] Cornell and the others returned to the Huntsman project where they continued to work.

After hearing Barton's report, Olsen telephoned Brown for an explanation, saying he wanted to request Cornell for dispatch as well as the Idaho workers. Brown said that Cornell was not in standing to work for Perry Olsen, that the company could not employ him, and that Olsen had to let him go. Perry Olsen did not comply with the Union's direction, and Cornell continued working.

On November 22, Cornell returned to the hiring hall alone to see what he could do about getting in the Union. He realized he "was getting lumped together with a bunch of people from the 635 that [he] was no longer affiliated with . . . [he did not] live in Idaho. So [he] was hoping that [he] could work something out." Bachman was the only union representative present.

Cornell asked Bachman what he could do to take care of the problem so that he could get into the Union.[24] Bachman told Cornell it was illegal for him to solicit work from union companies without first going through the Union. Bachman told Cornell, "I can't do anything. You need to [resolve your problems] in your home local." Cornell offered Bachman money "for his pocket," which Bachman declined. In each of Cornell's first two visits to the hiring hall, the only requests he made of Brown and Bachman were that they let him join the Union. In each instance he was refused. Cornell returned to work at the Huntsman project.

On November 29, representatives from the Union came to the Huntsman project. The Perry Olson foreman told the undispatched workers to hide, which they did on a roof top for about half an hour.

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[22] Cornell told Brown he wanted to join the Union. Brown said he had to deal with Bachman. Cornell testified that if he had known he would be eligible for dispatch as a union member if he got back in good standing with Local 635, he would immediately have done so. However Cornell also adamantly denied he was "behind" on his dues to Local 635, stating, "I haven't been a member of 635 for over two years . . . I took myself out of that union." This latter testimony shows no intention or desire to gain membership status through Local 635. Although Barton gave conclusionary testimony that Cornell was not allowed to get on the out-of-work list, I infer from the testimony as a whole that Cornell's sole expressed wish on November 19 was to obtain membership in Respondent and that he did not, on that date, ask to sign the out-of-work list as a nonmember.

[23] Barton's testimony differs somewhat from Olsen's recollection. Although neither testimony was received for the truth of what happened in the hiring hall, I found Barton's recall to be clearer and more specific, and I credit his account of what he told Olsen.

[24] Bachman apparently understood that Cornell wanted to sign the out-of-work list and receive a dispatch to Perry Olsen, as Bachman told Cornell there were 50 guys on the out-of-work list, and he did not think it was right for Cornell to cut in front of everybody else on the list.

On November 30, Sala and Olsen exchanged the following emails:

Sala to Olsen
Subject: Contract/hiring hall grievance[25]

Brian, Obviously you and [Brown] have had a difficult time over the last three weeks communicating and getting this issue resolved. I am not one for long emails or extending the problems we are having regarding the contract and dispatch. While I tried to accommodate a few "key" individuals after many folks were hired without proper dispatch.[26]

Let me try to clear this up. Except for the few key individuals who have already been processed, NO one else who is working there in violation will be processed or dispatched. They are in violation of our contract, the hiring hall procedures, and our own internal Constitution and Bylaws. If there are still folks who are in violation working tomorrow I will file the second step of the grievance since we have not been able to work this out in the first step.

If you need to meet, I will make myself available this afternoon at my office.

Olsen to Sala
Subject: Contract/hiring hall grievance

Looks like our emails just crossed.
I'm still trying to figure out the people that are currently approved as per previous communication. As per your [previous] email, I let the apprentice go and kept the other 4 employees working. I think it would be good to meet . . . if you could review the dispatches I sent in for the people from Idaho, I know they were late except for two of the men, and determine which employees I can keep employed and then we can go over that plus any additional information that [Brown] has from his Huntsman site visit yesterday.

On December 1, Sala met with Olsen.[27] Sala reviewed the dispatch procedures with Olsen, who wanted to know why the undispatched employees couldn't stay working. Sala told Olsen they were basically having a grievance meeting on how to resolve a grievance against the company for not following the hiring hall dispatch rules. Sala said the company's actions created a problem for individuals registered on the list who had solicited jobs from Perry Olsen but whom the company had not requested while, at the same time, the company hired undispatched workers. Sala told Olsen that all employees had to be properly dispatched and that the Union could not just pretend the breach of rules had not happened; there needed to be a resolution. Sala told Olsen that all undispatched employees had to be removed from the project, and the openings had to be filled through the hiring hall unless the hall ran out of eligible out-of-work list signers, which was unlikely as 75–80 names were on the list.

[25] No written grievance had been filed. The Union considered the matter to be an oral grievance.

[26] The reference to "key" individuals was to union-permitted employee transfers from another jobsite, generally into supervisory positions.

[27] There is little significant dispute as to what was said in the December 1 meeting. The following account is based primarily on the testimony of Sala, whom I found to be clear and coherent and to demonstrate good recall.

Olsen complained the company was far behind on the project, and he needed good people. Sala asked Olsen which workers he really wanted dispatched. Olsen gave Sala the following names: Thompson, Lirgg, Barton, and Benke, which, in resolution of the grievance, Sala agreed to. Sala agreed the company could retain Monk and Prince as well.[28] Sala told Olsen that if the workers came to the hiring hall and got properly registered for dispatch, the Union would dispatch them. Cornell was not discussed. Following the meeting Sala believed that all employees on the Huntsman jobsite who had not been properly dispatched had been removed from the job.[29] Olsen thereafter contacted Barton and instructed him to go to the hiring hall where, Barton understood, "they would dispatch us."

Following Olsen's instructions, on December 1, Barton returned to the hiring hall along with Cornell, Behnke, Monk, and Prince. It was Cornell's third visit. Brown and Bachman were there, and Barton told Brown the group was there to be dispatched. The workers told Brown they were not working.[30] Behnke, Barton, Monk, and Prince signed the out-of-work list, noting the local union of which they were members.[31] Brown then dispatched Behnke, Barton, Monk, Prince, and Thompson to the Huntsman project.[32] Brown did not dispatch Cornell, and Cornell asked why. As Barton recalled, Cornell told Brown he wanted to join the Union, and Brown told him he had to talk to Bachman.[33]

Cornell approached Bachman and said he wanted to join the Union and that he had whatever it was going to cost with him. Bachman told Cornell that he could not help him, that the Union was not accepting new members, and that Cornell needed to get his dues taken care of. Bachman told Cornell that if he paid the nonmember quarterly fee of $135, he would sign him up on the out-of-work list, but he would be at the bottom of the list, and the Union could not put him on the Huntsman job. As Cornell produced his money, he asked Bachman how the Union

[28] I infer from the testimony as a whole that Olsen at some point also specifically requested Monk and Prince.

[29] Sala testified that he did not know if the workers he had agreed to dispatch were working for Perry Olsen at that time, but as they could not be dispatched if they were employed, Sala presumed the employees, if working, would be terminated before they registered at the hall.

[30] I credit Brown's testimony that the group denied they were employed. His testimony is consistent with evidence that the Union consistently held to its requirement that only unemployed individuals could sign the hiring hall list and that the company had, 2 days earlier, tried to hide undispatched workers from the Union's inspection, justifying an inference that workers knew they would not be eligible for dispatch if employed.

[31] Sala understood the four employees and Thompson had taken steps to put themselves in good standing with their home local unions. Thompson apparently inadvertently neglected to sign the out-of-work list.

[32] The Union dispatched Thompson, Barton, Behnke, Monk, and Prince on December 1 to begin work at the Huntsman project on December 2.

[33] Cornell testified that Brown said it was his understanding that Cornell was no longer employed by Perry Olsen, and Cornell said that was news to him. This asserted exchange is inconsistent with other credited testimony, and I do not accept it.

got around right-to-work laws since Utah was a right-to-work state.[34] Bachman abruptly returned to his office area. Cornell followed him, saying he was not trying to make him mad. Cornell tried to shake hands with Bachman, but Bachman refused. Cornell did not sign the out-of-work list.

When Cornell returned home from his December 1 visit to the hiring hall, a telephone message from Olsen informed him that he was laid off.[35]

Sometime later, Cornell telephoned Olsen and asked if he could return to work. Olsen told Cornell that if he could work it out with the hiring hall, then Perry Olsen would hire him. Cornell told Olsen the Union would not let him sign the out-of-work list. Olsen did not request Cornell by name, assertedly because he knew Cornell was not on the out-of-work list.

Thereafter Cornell left telephone messages for union representatives, but no one returned his calls. In January after the instant charge had been filed, Cornell spoke to Bachman. Cornell asked if anything had changed and if Bachman could help him get in the Union. Bachman said he still had nothing for Cornell.[36]

IV. DISCUSSION

A. Legal Overview

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) states that the Section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

Section 8(b)(2) makes it an unfair labor practice for a union "To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of [the Act] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

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[34] This conversation between Cornell and Bachman is based on an amalgamation of the credible testimony of Cornell, Barton, and Bachman. Although Cornell testified that when he counted out $135 to pay the Union, Bachman declined to take it, saying he "just couldn't do it." Barton did not recall that exchange. Since I have found Barton to be more clear and reliable in his testimony than Cornell, I discredit Cornell's account in that regard. Bachman testified that when he offered Cornell the option of paying the nonmember quarterly fee, Cornell refused to pay it, saying that according to right to work, he did not have to. As Bachman's testimony in this regard differs from Barton's credible testimony, I do not accept it.

[35] Employment records show that Cornell did not work on or after December 1.

[36] Bachman recalled that Cornell said, "I know that Perry Olsen is hiring, and I want to join the Union." Bachman referred Cornell to the Union's attorney.

Union-operated exclusive hiring halls are permissible employment systems when lawfully memorialized in collective-bargaining agreements. *Teamsters Local 357 v. NLRB,* 365 U.S. 667 (1961). In operating hiring halls, unions must follow clear and unambiguous standards set out in a collective-bargaining agreement.

A union that operates a hiring hall must represent all individuals seeking to utilize that hall in a fair and impartial manner. In this regard, the Board has held that notwithstanding the absence of specific discriminatory intent, "any departure from established exclusive hiring hall procedures which results in a denial of employment to an applicant . . . inherently encourages union membership, breaches the duty of fair representation owed to all hiring hall users, and violates Section 8(b)(1)(A) and (b)(2)" absent demonstration of a legitimate justification. *Cell-Crete Corp.,* 288 NLRB 262, 264 (1988). *Operating Engineers Local 150 (Chiado),* 352 NLRB 360, 360 (2008); *Steamfitters Local Union No. 342*, *(Contra Costa Electric),* 336 NLRB 549, 552 (2001), enfd. 325 F.3d 301 (D.C. Cir. 2003). The Board's reasoning is that "such departures encourage union membership by signaling the union's power to affect the livelihoods of all hiring hall users, and thus restrain and coerce applicants in the exercise of their Section 7 rights." *Plumbers Local Union No. 342*, supra at 550.

> Specifically, a union operating an exclusive hiring hall may not discriminate with respect to registration and referrals on the basis of membership or nonmembership in the union or any other arbitrary, invidious, or irrelevant considerations. *Electrical Workers Local No. 3 (White Plains),* 331 NLRB 1498 (2000); *Sachs Electric Co.,* 248 NLRB 669, 670 (1980).

When the General Council proves that a union has departed from established hiring hall procedures, a violation is established unless the union comes forward with rebuttal evidence that the departure was justified based on a valid union-security clause or is necessary to the effective performance of the union's representative function. *Plumbers Local Union No. 342 (Contra Costa Electric*), supra at 553 fn. 10; *Operating Engineers Local 150 (Chiado),* supra at 376. In determining whether a union has established its necessity defense, the Board looks to whether the union's conduct was arbitrary. *Stage Employees IATSE (Lucas),* 332 NLRB 1, 4 (2000). Finally, a union's inadvertent mistake in operating a hiring hall arising from mere negligence does not violate Section 8(b)(1)(A) and 8(b)(2), independent of the duty of fair representation. *Plumbers Local Union No. 342*, supra at 550.

The Board and the Courts accord unions a wide range of discretion in serving the employees whom they represent. *Teamsters, Chauffeurs, Warehousemen & Helpers, Local 631, (Vosburg Equipment, Inc.)*, 340 NLRB 881, 881 (2003). "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338 (1953). "Thus it is not every act of disparate treatment or negligent conduct which is proscribed by Section 8(b)(1)(A), but only those which, because motivated by hostile, invidious, irrelevant, or unfair considerations, may be characterized as 'arbitrary conduct.' [Footnotes omitted.]" *Steelworkers Local Union No. 2869 (Kaiser Steel Corp.)*, 239 NLRB 982, 982 (1978). As the Board has noted, "The descriptive terms used to describe breaches of the duty—'arbitrary,' 'invidious,' 'discriminatory,' 'hostile,'

'unreasonable,' 'capricious,' 'irrelevant or unfair considerations,' without 'honesty of purpose'—indicate deliberate conduct that is intended to harm or disadvantage hiring hall applicants. They all imply that the union is either using its power to control [employment] referrals against the interests of individual applicants or classes of applicants, or that it may do so at any time, at its discretion." *Steamfitters Local 342 (Contra Costa Electric),* supra at 550–553.

B. Positions of the Parties

There is no dispute that the Union's hiring hall was appropriately established as a permissible and legitimate employment system. There is also no contention the Union acted contrary to the Act in declining to increase its membership rolls. The issues focus on whether the Union's conduct toward Cornell breached its obligations under the Act.

The General Counsel contends that since November 19, Respondent has independently violated Section 8(b)(1)(A) of the Act by repeatedly failing and refusing to register Cornell on its out-of-work list for referral to carpenter jobs generally. The General Counsel also contends that on December 1, Respondent violated Section 8(b)(2) and 8(b)(1)(A) of the Act by requesting Perry Olsen to discharge Cornell, thereby attempting to cause and causing Cornell's discharge because Cornell was not a member of any carpenter union, and by thereafter failing and refusing to refer Cornell for employment with Perry Olsen. The General Counsel advances three legal theories:

1. Respondent's refusal to register Cornell on December 1 and in mid-January was a departure from its established hiring hall procedure;
2. Respondent's refusal to register Cornell on all four occasions was discriminatory because Respondent treated Cornell differently than other similarly situated applicants; and
3. Respondent's refusal to register Cornell was based on discriminatory and arbitrary considerations and, therefore, breached its duty of fair representation.

Respondent argues that it lawfully caused Cornell's termination from the Huntsman project because Cornell was working in violation of the hiring hall rules and that it thereafter did not refer Cornell to the project because he remained ineligible for referral. As to allegations that Respondent treated Cornell differently than other similarly situated applicants, Respondent contends that it believed the individuals it dispatched to Perry Olsen in December were eligible for referral at the time of their dispatch.

C. Alleged Independent Violations of Section 8(b)(1)(A)

Perry Olsen understood its contractual obligation to employ only workers properly dispatched from the hiring hall, an obligation of which the Union had reminded the company in 2009. Nevertheless, during November the company employed on its Huntsman project a number of workers who had not been dispatched properly. The group included at least 13 workers, six of whom had been transferred from the company's Idaho jobsite [Thompson, Lirgg, Barton, Monk, Prince, and Benke] and seven of whom, including Cornell, had not.

In mid-November, the Union discovered undispatched workers on the Huntsman jobsite. By email of November 18, Sala told Olsen the undispatched Idaho workers were not eligible for transfer, no workers could work unless they were dispatched, and if workers were not listed on the out-of-work list and eligible for dispatch, they could not be requested by name. Later that same day, Sala emailed to Olsen the names of seven of Perry Olsen's current employees who had not been dispatched from the hiring hall and were ineligible to sign the out-of-work list or to be dispatched. One was Cornell. Sala directed Olsen to immediately remove the seven from employment. Perry Olsen did not remove the employees. There is no evidence the Union was aware of the company's noncompliance.

Thereafter, on November 19 and 22, and December 1, Perry Olsen employees visited the hiring hall with the aim of resolving employment impediments. Their interactions with union representatives, Brown and Bachman, are in pertinent part as follows:

November 19: Although Lirgg told Brown and Bachman the group wanted to sign the out-of-work list, Cornell told them he and the other employees wanted to "join the Union." Cornell told Bachman that he wanted to do whatever was necessary to join the Union and, later, that he needed to get in the Union and wanted to know how to do that. The union representatives determined that Lirgg was current in his dues and dispatched him to Perry Olsen; the representatives told Barton he was delinquent in his dues to his home local, Local 635, and told Cornell he had been dropped from membership in his former local, Local 635. There is no evidence Cornell sought to sign the out-of work list as a nonmember. Thereafter, Cornell continued to work for Perry Olsen.

November 22: Cornell asked Bachman what he could do to get into the Union. Bachman told him to resolve his problems with Local 635. There is no evidence Cornell sought to sign the out-of work list as a nonmember.

On December 1, the Union and Olsen met to resolve the Union's grievance over Perry Olsen's failure to abide by its contractual hiring hall obligations. The Union demanded that Perry Olsen remove all undispatched workers from the jobsite. Olsen urged his need for good workers to meet jobsite time commitments, specifically requesting Thompson, Lirgg (who had already been dispatched), Barton, Benke, Monk, and Prince. The Union agreed to dispatch the workers if they properly registered.[37]

December 1: Cornell, Barton, Benke, Thompson, Monk, and Prince returned to the hiring hall. They informed Brown they were not working. Barton, Benke, Thompson, Monk, and Prince, having attained good standing with Local 635, were dispatched to the Huntsman project. Cornell again sought to join the Union. He was again told the Union was not accepting new members. Bachman told Cornell that if he paid the $135 nonmember quarterly fee of $135, he could sign the out-of-work list at the bottom, but he could not be dispatched to the Huntsman job. As Cornell produced the necessary money, he asked how the Union got around Utah's right-to-work laws. Bachman, in apparent umbrage, did not accept the proffered money and refused to speak further to Cornell, who did not sign the out-of-work list.

[37] The unstated but inferentially clear corollary was that Olsen would remove all undispatched workers from the job.

It is true that under the hiring hall rules, if Cornell had not been currently working, he could have registered on the out-of-work list upon paying to the Union the nonmember quarterly service fees. However, from November 2 until sometime shortly after his December 1 interaction with Bachman at the hiring hall, Cornell was, in fact, employed by Perry Olson and thereby ineligible to sign the list.[38] Moreover, until December 1, Cornell did not seek to register on the out-of-work list either as a member of a sister local, which membership he did not apparently wish to possess, or as a fee-paying nonmember. Rather, until December 1, Cornell repeatedly requested membership in the Union, which he apparently viewed as a prerequisite to dispatch to the Huntsman job. His requests for membership were lawfully denied.

The General Counsel argues that while Cornell may have framed his requests in terms of "joining" the Union, he was really seeking to register on the out-of-work list in any possible manner, which goal, though unarticulated, the Union should have understood. The record as a whole does not justify such an inference. Rather, the record supports a finding that the Union reasonably believed Cornell wanted membership in the Union. A more penetrating consideration of Cornell's requests might have resulted in the Union's comprehending that Cornell really wanted to be apprised of any route whereby he could be dispatched to the Huntsman job along with the Idaho workers. In the absence of any evidence of deliberate or disingenuous obtuseness, the union officials who responded to Cornell can only be accused of misunderstanding his essential objective. In that, they were possibly negligent. However, mistakes in exclusive hiring hall operation arising from "mere negligence" do not violate a union's duty of fair representation and do not violate Section 8(b)(1)(A) and 8(b)(2). *Steamfitters Local 342 (Contra Costa Electric),* supra.

The General Counsel also argues that the Union's pre-December 1 response to Cornell was discriminatory, as it treated him differently than other similarly situated applicants, namely the Idaho workers who were referred to the Huntsman job. The Idaho workers, however, were not similarly situated to Cornell. The Union had conceded their dispatches to the Huntsman job at the specific request of Olsen and in resolution of the Union's grievance against Perry Olsen. Olsen did not request Cornell. "Unions are accorded a wide range of discretion in serving the employees whom they represent" even where a heightened duty of fair representation is assumed to exist in the context of an exclusive hiring hall. *Teamsters, Chauffeurs, Warehousemen & Helpers, Local 631, Affiliated With Teamsters (Vosburg Equipment, Inc.* and *Bechtel Nevada, Inc.)*, 340 NLRB 881, 881 (2003). There is no evidence from which I can infer that the Union, by resolving its grievance with Perry Olsen in the manner it did, engaged in "'[A]rbitrary,' 'invidious,' 'discriminatory,' 'hostile,' 'unreasonable,' 'capricious,' 'irrelevant or unfair . . .' deliberate conduct . . . intended to harm or disadvantage hiring hall applicants." *Steamfitters Local Union No. 342 (Contra Costa Electric)*, supra at 551, quoting *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67, 89 (1989). Rather, the evidence shows that the Union made certain concessions to Olsen in order to resolve a grievance that might otherwise have caused expense to the Union and economic difficulty to a struggling signatory company, both of which considerations fit within a union's

[38] The fact that the Union may have been unaware of his employment status does not make him eligible.

reasonable discretion. Accordingly, the Union's failure to dispatch Cornell to the Huntsman job and its demand that all undispatched workers be removed from that site do not violate the Act.

On December 1, Cornell's entreaty to the Union changed. On that day, he sought to pay his nonmember fee and sign the out-of-work list. The Union, through Bachman, refused to let him do so, for reasons unrelated to valid eligibility rules.[39]

When the General Counsel shows that a union has departed from established hiring hall procedures, a violation is established unless the union comes forward with rebuttal evidence that the departure was justified. *Steamfitters Local 342 (Contra Costa Electric, Inc.),* supra, citing *Operating Engineers Local 450*, 267 NLRB 775, 795 (1983).[40]

The credible evidence establishes that on December 1, the Union refused to let Cornell pay his nonmember fee and register on the hiring list because Cornell questioned the Union's obligations under Utah's right to work provisions. In refusing to permit Cornell to pay the nonmember fee because of his right to work question, the Union departed from established hiring hall procedures. The Union must therefore show the departure was justified. The Union has made no such showing.

In the absence of justification evidence, the Union's refusal to let Cornell pay the nonmember fee because of his right to work question was "'[A]rbitrary,' 'invidious,' 'discriminatory,' 'hostile,' 'unreasonable,' 'capricious,' 'irrelevant or unfair' [and constituted] deliberate conduct . . . intended to harm or disadvantage [Cornell, a potential] hiring hall [applicant]." *Steamfitters Local Union No. 342 (Contra Costa Electric, Inc.)*, supra at 551. As such, the Union's conduct violated Section 8(b)(1)(A) of the Act.

Bachman's refusal to let Cornell sign the out-of-work list—corollary to his refusal to accept Cornell's money—requires a different analysis. Refusal to permit Cornell to sign the list certainly impacted Cornell's employment opportunities. The refusal foreclosed his ability to solicit work directly from contractors signatory to the agreement, including Perry Olsen. Employers were permitted to request by name workers who were registered on the out-of-work list, regardless of their positions on the list, and Olsen was assertedly willing to request Cornell should he obtain registration. However, the Union's refusal to register Cornell on December 1 cannot be said to have violated Section 8(b)(2) and 8(b)(1)(A) of the Act because Cornell was not, at the time of the refusal, eligible to sign the out-of-work list since he was at that time employed, and unemployment was a clear condition precedent to registration.

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[39] It is true that Cornell was ineligible to sign the out-of-work list at that time in any event because he was then employed by Perry Olson. However, the Union was unaware of that fact, and Bachman's response, discussed hereafter, is coercive in violation of Sec. 8(b)(1)(A) even if the end result—refusal to permit Cornell to sign the out-of-work list—did not violate Sec. 8(b)(1)(A) and 8(b)(2) because of Cornell's ineligibility.

[40] I also apply the analytical framework of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Cornell's employment status, which had been an insurmountable, albeit hidden, obstacle to his registration during his December 1 visit to the hiring hall changed when Perry Olsen laid him off later that same day. Based on subsequent events, it is reasonable to infer that the Union, for arbitrary reasons, would have continued to adhere to its refusal to permit Cornell to pay the nonmember fee and sign the list irrespective of his employment status.

Following his layoff, Cornell left telephone messages for union representatives that were not returned. In January, Cornell managed to reach Bachman by telephone and asked if anything had changed. Cornell also asked if Bachman could help him get in the Union. Although Cornell's question about getting in the Union is subject to the same analysis that applies to his earlier membership requests, his query as to whether anything had changed must reasonably have encompassed the Union's December 1 refusal to let him pay the nonmember fees, which was based entirely on arbitrary and unlawful considerations. Bachman's response that he still had nothing for Cornell was, therefore, a continuation of the Union's arbitrarily based refusal to let Cornell pay the nonmember fees. Bachman's continuing refusal foreclosed for Cornell any opportunity of signing the out-of-work list, even though he was, after December 1, otherwise eligible. Bachman's response also evidences the futility of Cornell's further attempting to pay the nonmember fee and sign the out-of-work list even as an unemployed nonmember. In those circumstances, after December 1, when Cornell became unemployed, the Union violated Section 8(b)(2) and 8(b)(1)(A) of the Act by refusing to permit Cornell to pay the nonmember fees and to sign the hiring hall out-of-work list.

CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. The Employer, Perry Olsen Drywall, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By refusing to permit Gerald Cornell to pay the nonmember hiring hall registration fee on December 1 because Cornell questioned its hiring hall procedures, an arbitrary reason unrelated to valid eligibility rules, Respondent engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.
4. By refusing to permit Gerald Cornell to sign its out-of-work register after December 1, 2010 because Cornell questioned its hiring hall procedures, an arbitrary reason unrelated to valid eligibility rules, Respondent has caused or attempted to cause employer discrimination within the meaning of Section 8(a)(3) of the Act, and has therefore engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.
5. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found Respondent has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action.

It will be left to the compliance stage of this proceeding to determine whether Gerald Cornell, had he been permitted to sign the Union's out-of-work list after December 1, 2010, would have been dispatched to the Huntsman jobsite or to other available jobsites. If at the

compliance stage it is determined that Gerald Cornell would have obtained dispatch, Respondent must make Gerald Cornell whole for its unlawful refusal to permit him to sign the Union's out-of-work list after December 1, 2010. Any backpay found owing shall be computed on a quarterly basis from December 2, 2010, the date when Gerald Cornell would have been eligible to sign the Union's out-of-work list had he been permitted to pay the nonmembership fee, to the date Gerald Cornell is placed in the position on the out-of-work list that he would have had had he been permitted to sign the out-of-work list after December 1, 2010, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[41]

ORDER

Southwest Regional Council of Carpenters, Carpenters Local #1507, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to let Gerald Cornell pay the nonmember registration fee and sign its exclusive hiring hall out-of-work list as a nonmember applicant for employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Maintain and operate its hiring hall and job referral system in a nondiscriminatory manner.

(b) Forthwith notify Gerald Cornell that he may register on the hiring hall out-of-work list as a nonmember upon his tendering the appropriate nonmember registration fee, placing his name in the list position he would have attained had he been permitted to sign the list after December 1, 2010, and thereafter permit Gerald Cornell to enjoy all benefits and privileges, including referral rights, attendant upon his placement on the out-of-work list.

(c) Remove from its files and records any reference to the unlawful refusal to permit Gerald Cornell to pay the nonmember registration fee and register on its hiring hall out-of-work list and, within 3 days thereafter, notify him in writing that it has done so and that it will not use the unlawful refusal against him in anyway.

(d) If, at the compliance stage of this proceeding, it is determined that Gerald Cornell, had he been permitted to sign the Union's out-of-work list after December 1, 2010, would have been dispatched to and employed at the Huntsman job or other available jobsites, make Gerald Cornell whole for any loss of earnings and other benefits suffered as a result of the unlawful

[41] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

refusal to permit Gerald Cornell to sign the out-of-work list after December 1, 2010, in the manner set forth in the remedy section of the decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring hall records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

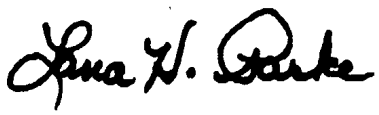
(f) Within 14 days after service by the Region, post at its facilities in West Jordan, Utah, copies of the attached notice marked "Appendix."[42] Copies of the notice, on forms provided by the Regional Director for Region 27 after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates by such means with its member and nonmember hiring hall users. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former members and out-of-work list signers since December 2, 2010.

(g) Sign and return to the Regional Director sufficient copies of the notice for posting by Perry Olsen Drywall, Inc., if willing, at all places where notices to employees working at its Utah jobsites are customarily posted.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: September 22, 2011.



Lana H. Parke
Administrative Law Judge

[42] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse, for any arbitrary reason unrelated to our valid hiring hall eligibility rules, to permit Gerald Cornell, or any other person, to pay the nonmember hiring hall registration fee.

WE WILL NOT refuse to permit Gerald Cornell, or any other persons entitled to use our hiring hall, to sign the hiring hall registration or out-of-work list upon compliance with our established, nondiscriminatory referral procedures.

WE WILL NOT in any like or related manner breach our duty of fair representation for all our members and other persons entitled to use our hiring hall.

WE WILL maintain and operate our hiring hall and job referral system in a nondiscriminatory manner.

WE WILL notify Gerald Cornell that we will register him on our out-of-work list and refer him for employment in the order in which he signs the out-of-work list and for those jobs for which he is qualified.

WE WILL make whole Gerald Cornell, with interest, for any loss of earnings and other benefits suffered as a result of our refusal to permit him to sign the hiring hall registration or out-of-work list as a nonmember applicant for employment in violation of our established referral procedure.

WE WILL, within 14 days from the date of the Board's Order, remove from our files and records any reference to the unlawful refusal to permit Gerald Cornell to register on our hiring hall out-of-work list and, within 3 days thereafter, notify him in writing that we have done so and that we will not use the unlawful refusal against him in anyway.

Southwest Regional Council of Carpenters,
Carpenters Local #1507

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

600 17th Street, 7th Floor, North Tower, Denver, CO 80202-5433

(303) 844-3551, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (303) 844-6647.